UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff,

- against -

05-CV-0491
DNH/DRH

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant.

CONFIDENTIALITY STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this stipulation, through their undersigned counsel, that:

1. Proceedings and Information Governed

This Stipulation and any amendments or modifications hereto shall govern any documents, information or thing furnished by any party, including third parties, to any other party in connection with the discovery and pretrial phase of this action. This Stipulation shall not preclude any party from withholding any document, information or thing on the basis of the attorney-client privilege or attorney work-product doctrine, or otherwise affect any party's claim of privilege with respect to any such document, information or thing. The inadvertent production of any privileged document, information or thing shall not be deemed a waiver of such privilege or otherwise affect

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any party's right to seek return of the inadvertently produced document, information or thing. This Stipulation does not govern proceedings during trial, nor does it prohibit either party from seeking a protective order to govern proceedings during trial.

2. Definitions

"CONFIDENTIAL" documents, information or things means documents, information or things that constitute, reflect or contain non-public, proprietary or confidential documents, information or things belonging to or concerning a party and that a party designates as "CONFIDENTIAL."

3. Designation of Information

a. Documents, information and things produced by a party during the course of this litigation, including but not limited to responses to discovery requests and interrogatories, may be designated by such party as "CONFIDENTIAL" at the time of production. After such time, a document, information or thing may be designated as "CONFIDENTIAL" in writing, by any party, provided that any such designation shall be made within two weeks after disclosure. In addition, within two weeks of the date of this Stipulation, any party may designate as "CONFIDENTIAL" a document, information or thing previously produced in this action.

b. Documents, information and things produced by a party during the course of this litigation, including but not limited to responses to discovery requests and interrogatories, shall be designated by the producing party as containing "CONFIDENTIAL" information by placing a "CONFIDENTIAL" legend on each page and each thing or, alternatively, advising the receiving party in writing as to the particular documents designated "CONFIDENTIAL."

c. A party may designate information disclosed at a deposition as "CONFIDENTIAL" by requesting that the reporter so designate all or part of the deposition transcript at the time of the deposition or in writing within two weeks after receipt of the transcript. Where only a portion of a deposition transcript contains "CONFIDENTIAL" information, only such portion of the transcript may be so designated.

d. Any party invoking "CONFIDENTIAL" protection during a deposition may exclude from the room any person who is not authorized to receive information designated "CONFIDENTIAL."

e. Any designation of discovery responses, briefs, memoranda or any other papers filed or lodged with the Court and/or served on opposing counsel as "CONFIDENTIAL" shall be made when such papers are filed, lodged and/or served. The filing or lodging with the Court of any document containing "CONFIDENTIAL" information shall be done in conformance with Section 5 of this Stipulation.

f. A party may designate information disclosed at a hearing as "CONFIDENTIAL" by requesting, at the time the information is proffered or adduced, that the Court receive the information *in camera* and designate the transcript appropriately.

g. The parties shall use reasonable care to avoid designating as "CONFIDENTIAL" any document, information or thing that is not entitled to such designation or that is generally available to the public.

4. Disclosure, Use and Handling of Confidential Material

a. All documents, information and things, whether designated as "CONFIDENTIAL" or not, may be used by persons to whom such documents and information are disclosed only for purposes of pretrial preparation and proceedings in this action, trial of this action and any appellate proceedings in this action. Such documents, information and things shall be used for no other purpose unless and until agreed to in writing by all parties to this action or authorized by order of the Court. No person who receives any document, information or thing shall disclose it to any person for any purpose other than for pretrial preparation and proceedings in this action.

b. Documents, information and things designated as "CONFIDENTIAL" may be disclosed by the receiving party only to: (i) officers and employees of the receiving party who the receiving party reasonably and in good faith believes need to know in order for the receiving party to prepare for this action; (ii) counsel in this action, and such counsel's employees; (iii) court reporters and stenographers engaged to transcribe depositions or proceedings in this action; (iv) the Court and its employees; (v) employees of the designating party during the course of a deposition or other proceeding in this action; (vi) experts or consultants retained by the receiving party for assistance in this action, provided that such experts and consultants have executed an undertaking to be bound by the provisions of this Stipulation; (vii) any non-party witness or any person reasonably anticipated to be a witness at a deposition or other proceeding in this action, provided such person has executed an undertaking to be bound by the provisions of this Stipulation; and (viii) any other person, with the prior written approval of the designating party, provided such person has executed an undertaking to be bound by the provisions of this Stipulation.

c. In the event that a party's briefs, memoranda, discovery requests, requests for admission or other papers of any kind contain another party's "CONFIDENTIAL" information, the papers shall be designated as "CONFIDENTIAL" and shall be treated accordingly.

d. All documents, including attorneys notes and abstracts, that contain another party's "CONFIDENTIAL" information shall be treated as if such documents were also designated as "CONFIDENTIAL."

e. All documents designated as "CONFIDENTIAL – ATTORNEYS ONLY" shall be treated in every respect as documents designated "CONFIDENTIAL," except that such documents shall not shown to any persons other than attorneys for the receiving party and retained experts, except with the prior written approval of the designating party.

5. Filing or Lodging Documents with the Court

Any document filed or lodged with the Court that constitutes or contains "CONFIDENTIAL" documents, information or things shall be filed in a sealed envelope, endorsed with the caption of the case, the title of the document and the following legend:

CONFIDENTIAL INFORMATION

This envelope is sealed pursuant to the February ___, 2006 Confidentiality Stipulation and Order in this action. It contains information designated as "CONFIDENTIAL" and is not to be opened or the contents revealed except by Order of the Court.

Notwithstanding the foregoing legend on envelopes containing "CONFIDENTIAL" documents filed with the Court, the Court may open such envelope for purposes of conducting an *in camera* review of such documents to determine whether the "CONFIDENTIAL" designation is appropriate. Further, this paragraph 5 shall apply only to those court filings not otherwise governed by decisional law in the federal circuit in which this matter is venued i.e., Lugosch III, Ungerer, et al. v. Pyramid Company of Onondaga, et al., 2006 U.S. App. Lexis 525 (2nd Cir. 2006).

6. Inadvertent Failure to Designate

In the event that a producing party inadvertently fails to designate documents, information or things as "CONFIDENTIAL," the producing party may later correct the error by notifying the adverse party of the error in writing and making the appropriate designation in accordance with paragraph 3 above. The adverse party shall thereafter treat the documents, information or things in accordance with the designation and shall take reasonable steps to ensure that any person to whom the adverse party has previously disclosed the documents, information or things treats them in accordance with the designation.

7. Challenge to Designations

a. A party may challenge any other party's designation of any document, information or thing as "CONFIDENTIAL" at any time. Failure of a party expressly to challenge a designation shall not constitute a waiver by such party of the right to assert at a subsequent time that the designation is not appropriate.

b. In case of disagreement with the designation of any document, information or thing as "CONFIDENTIAL," a party may request in writing that the designating party change the designation. The designating party shall then have ten (10) business days from service of the request:

(i) to advise the requesting party whether it will change the designation as requested; and

(ii) to explain the reasons supporting any refusal to comply with the request.

c. If a party denies a request to change the designation of any document, information or thing and the requesting party disagrees with the designating party's reasons for such denial, the requesting party may apply to the Court, by letter or motion, for an order removing or changing the designation in the manner stated in the request. No use or disclosure of any document, information or thing designated "CONFIDENTIAL" shall be made, except as otherwise authorized by this Stipulation, unless and until the parties agree or the Court orders that the designation shall be removed.

8. Inadvertent Disclosure

a. In the event of an inadvertent disclosure of another party's "CONFIDENTIAL" documents, information or things to a person not authorized by this

Stipulation to receive such materials, the party making the inadvertent disclosure shall, upon learning of the disclosure:

(i) promptly notify the person to whom the disclosure was made that it contains "CONFIDENTIAL" information subject to this Stipulation;

(ii) promptly make reasonable efforts to obtain the return of the "CONFIDENTIAL" documents, information, or things from and preclude its dissemination or use by the person to whom disclosure was inadvertently made; and

(iii) within five (5) business days, serve the producing party with a written notice stating the identity of the person to whom the disclosure was made, the nature of and circumstances surrounding the disclosure and the steps taken to obtain the return of the improperly disclosed documents, information or things and to ensure against their further dissemination or use.

9. Non-party Information

Discovery in this proceeding may involve disclosure by a non-party of its "CONFIDENTIAL" documents, information or things. At the option of a non-party, such documents, information or things may be produced subject to the provisions of this Stipulation and, in that event, shall provide the non-party, with respect to the information produced by such non-party in connection with the discovery and pre-trial phase of this action, with all of the rights and obligations of a party as created by this Stipulation.

10. Subpoenas

a. In the event any person or party having possession, custody or control of any document, information or thing designated as "CONFIDENTIAL" by another party pursuant to the terms of this Stipulation receives a subpoena or other process or order to produce the document, information or thing, the subpoenaed person or party shall promptly (within three business days):

(i) give notification in writing of such fact to the attorneys of record of the designating party;

(ii) furnish such attorneys of record with a copy of such subpoenas, process or order; and

(iii) provide reasonable cooperation to the designating party with respect to any procedure instituted by the designating party to protect the confidentiality of the document, information or thing.

b. The subpoenaed party shall give the designating party ten (10) business days after service of the notice of the subpoena on the other parties to make a motion to quash or modify the subpoena.

c. If the designating party makes a motion to quash or modify the subpoena, process or order, the subpoenaed party shall not disclose, pursuant to the subpoena, process or order, any document, information or thing designated as "CONFIDENTIAL" by the designating party except as required by an order or other process of the court having jurisdiction over the matter, and then only in accordance with such order or process.

d. If the designating party does not make such a motion within ten (10) business days, the subpoenaed person or party may produce the designating party's documents, information or things designated as "CONFIDENTIAL," and such documents, information or things shall be treated as "CONFIDENTIAL" in accordance with this Stipulation and Order.

11. Modification

a. Nothing herein shall restrict the power of the Court to modify this Stipulation or any term hereof for good cause shown.

b. Nothing herein shall preclude any party from moving the Court to modify the terms of this Stipulation or the designation of any document or information.

12. No Waiver

Neither the taking of, nor the failure to take, any action to enforce the provisions of this Stipulation, nor the exercise of, or failure to exercise, any rights created by this Stipulation, shall constitute a waiver of any right to seek or obtain protection or relief other than as specified herein or to pursue any claim or defense in this action or any other action. This Stipulation shall not affect the rights of the parties to object to discovery on grounds other than those related to trade secrets or confidential or proprietary information claims, nor shall it relieve a party of its obligation to respond properly to discovery requests.

13. Disposition of Documents at Termination of Litigation

At the conclusion of litigation, the parties shall, at the election of the prevailing party, return or destroy all documents produced in discovery herein.

SO STIPULATED:

Dated: February 17th, 2006

MCNAMEE, LOCHNER, TITUS & WILLIAMS, P.C.

By: ______________________
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Attorneys for Priddis Music Inc.

Dated: February 21, 2005

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Attorneys for Defendant
Trans World Entertainment Corporation

SO ORDERED:

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U.S.D.J.

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